



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/150161

PRELIMINARY RECITALS

Pursuant to a petition filed June 21, 2013, under Wis. Stat. §48.57(3m)(f), and Wis. Admin. Code §DCF 58.08(2)(b), to review a decision by the Perez-Pena Limited in regard to Kinship Care, a hearing was held on July 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency was correct in terminating petitioner's Kinship Care benefits because it determined that the children's mother was residing with the petitioner and the mother's children.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Stephanie Purpero, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the grandmother of A.T., S.T., and M.T. She had been caring for the children for approximately 2 years at the time of her reassessment for Kinship benefits on May 18, 2013. She began receiving the Kinship benefit in August 2012.
3. The children's mother is [REDACTED]. At the time of the reassessment the agency had received information from the mother's probation officer as well as from a check on the mother's FoodShare benefits in Milwaukee County that the mother was using petitioner's address.
4. On June 14, 2013 the Kinship agency issued notice to the petitioner informing her that her Kinship Care benefits had been terminated because there was evidence that the children's mother was residing with the petitioner and her children.
5. On June 20, 2013 the petitioner filed a restraining order against the children's mother.
6. Petitioner appealed that decision on June 21, 2013.

DISCUSSION

The fundamental eligibility requirements for the Kinship Care Program are mandated by statute. Wis. Stat. §48.57(3m) states payments will be issued only if the county or other responsible agency which conducts the an assessment determines that: (1) there is a need for the living arrangement; (2) the living arrangement is in the best interest of the child; and (3) the child meets the jurisdictional criteria as a child in need of protection or services (CHIPS – Wis. Stat. §48.13). In the discontinuance of an ongoing case, the Kinship Care agency has the burden of establishing there is no need for the children to reside with petitioner.

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6).

For Kinship Care cases in which the relative is not a guardian appointed under §48.977, the conditions listed in §48.57(3m)(am) must be met. The pertinent "conditions specified in par. (am)" are as follows:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines *that there is a need* for the child to be placed with the kinship care relative **and** that the placement with the kinship care relative is in the *best interest of the child*.
2. The county department or department determines that the child meets one or more of the criteria specified in s.48.13 or 938.13 **or** that the child *would be at risk* of meeting one or more of those criteria if the child were to remain in his or her home.

(Emphasis added) *Id.*, (3m)(am)1, 2. The Department of Health and Family Services has set forth a policy pertinent to these standards as follows:

As the relative who receives the Kinship Care payment has no legal obligation to support the children for whom she is caring, the Kinship Care statute mandates there be an established need for the relative to provide care for the children. In addition to being in

the best interests of the child, the agency must determine that the child would be at risk of abuse or neglect if returned to his or her natural parent.

DHFS Policy Memo, *Vol. 2 of the Kinship Care Questions and Answers*, p.23, question 9, issued January 5, 1998. The abuse and neglect statutory sections referenced above – Wis. Stat. §48.13 and Wis. Stat. §938.13, both concern children in need of protection or services. To meet that standard, a child must be the victim of abuse or at substantial risk of becoming a victim of abuse. Or a child's parent must refuse, neglect, or be unable (for reasons other than poverty) to provide necessary care, food, clothing, medical or dental care so as to seriously endanger the physical health of the child. Wis. Stat. §48.13(3),(3m),(10). In addition, the Wisconsin Administrative Code, Chapter DCF 58, has been repealed and recreated to codify the Kinship Care program. Wis. Adm. Code, §DCF 58.10(1) describes the “need” for placement as follows:

- (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:
 - 1. The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
 - 2. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
 - 3. The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
 - 4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

In Decision No. KIN-40/51985, dated May 22, 2002, the Department's Deputy Secretary concluded that even when the assessor finds that one of the four grounds cited above are met, there still must be evidence that there is a risk to the child cited in Wis. Stat. §48.13 if the child were to live with a parent. Essentially that decision ties together the first two conditions cited in Wis. Stat. §48.57(3m)(am), that there be a need for the placement and that the child be at risk of harm that could lead to a Child In Need of Protection or Services (CHIPS) case.

In this particular case, the agency representative explained that the termination occurred because it had received information that the children's mother was residing with the petitioner and her children. Specifically, the mother's probation officer indicated that the mother was using petitioner's address, and a check on the mother's FoodShare benefits in Milwaukee County also showed her using petitioner's address. It appears from the record that the mother used petitioner's address as a mailing address when she was released on probation. The evidence supports that this was the case, and that the mother used this address for mailing purposes because she did not have a stable place to live. The petitioner testified that the mother did come to her home on a few occasions, but it was because the mother would break into the home and steal her things in an effort to support her drug habit. The mother also has a history of physically abusing petitioner and threatening her. Thus it was on June 20, 2013 the petitioner ultimately filed a restraining order against the children's mother. Part of the problem for the agency was that the mother was unable to provide verification of where she was in fact residing, in part because the probation officer was not able to provide that verification either. However, the probation officer has since provided a letter dated July 15, 2013 which confirms that the mother had reported an address on 30th Street to her on April 26, 2013. The probation officer would not confirm that was her address until she met the mother at that address, which did occur on June 16, 2013. I add that the mother was again arrested on July 3, 2013 and was in custody at the time of the probation officer's letter.

Based on all of the above, I believe there is a need for the children to be placed with the kinship care relative and that the placement is in the best interest of the children. The evidence supports a finding that the mother did not actually reside with petitioner, but rather used the mailing address as she was not in a stable situation. Having no evidence to support the agency's finding that the mother was in fact living with the petitioner and the children, I conclude that petitioner is eligible to continue receiving Kinship Care benefits. As the agency terminated the benefit in May, the benefit should be awarded to petitioner retroactive to that time.

CONCLUSIONS OF LAW

1. That the preponderance of the evidence does not support the basis for the agency's termination of the Kinship benefit effective May 1, 2013.
2. That petitioner is eligible to continue receiving Kinship benefits effective May 1, 2013.

THEREFORE, it is

ORDERED

That the matter is remanded to the Bureau of Milwaukee Child Welfare with instructions to: rescind and reverse the termination of the petitioner's Kinship Care benefit and establish her as eligible for Kinship Care benefits for the children retroactive to May 1, 2013.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

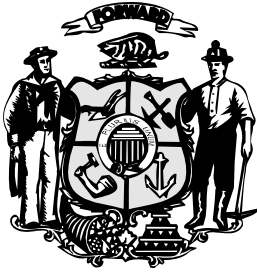
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of August, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 30, 2013.

Perez-Pena Limited
DCF - Kinship Care
DCF - Kinship Care